

MINUTES OF THE OPEN SESSION

OF THE RHODE ISLAND ETHICS COMMISSION

March 8, 2005

The Rhode Island Ethics Commission held its 5th meeting of 2005 at 9:00 a.m. at the Rhode Island Ethics Commission Conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, March 8, 2005, pursuant to the notice published at the Commission Headquarters and on the State House Library.

The following Commissioners were present:

James Lynch, Sr., Chair	Frederick K. Butler
George E. Weavill, Jr., Secretary	Barbara R. Binder
Richard E. Kirby*	Ross E. Cheit
James C. Segovis	

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Jason M. Gramitt, Commission Education Coordinator; Staff Attorneys Dianne L. Leyden and Macall Robertson, and Commission Investigators Steven T. Cross, Peter J. Mancini, and Michael Douglas.

At approximately 9:03 a.m., the Chair opened the meeting. The first order of business was to approve the minutes of the Open Session

held on February 15, 2005.

Upon motion made by George E. Weavill, Jr. and duly seconded by James C. Segovis, it was unanimously

VOTED: To approve the minutes of the Open Session held on February 15, 2005.

The next order of business was that of advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of David R. Gifford, MD MPH, nominated by the Governor to serve as the Director of the Rhode Island Department of Health. Mr. Gramitt advised that the third issue regarding a pre-existing consulting agreement between the petitioner's spouse and the DOH has become moot. He also noted that the scope of Quality Partners' Diabetes Collaborative and Teamwork contract has changed, decreasing the compensation, but stated that the change does not alter the scope of the opinion.

In response to Commissioner Weavill, Dr. Gifford informed that his spouse is a Director of Outpatient Quality and is part of a leadership team that sets policies and reports to the Board of Directors. He noted that several staff members report to her. He indicated his belief that she presently does not hold any board positions. Commissioner

Butler questioned whether, given the DOH's mandate, the petitioner is comfortable with its Managing Director making licensing decisions. Dr. Gifford stated that a board with six non-health field members and six licensed physicians, advised by counsel, make the recommendations. He advised of the process for reviewing complaints, including investigation and referrals to the full board for approval. He represented that, while he would be the one called upon to take immediate action to remove or suspend licenses for egregious acts, the Managing Director could make those decisions.

Commissioner Weavill inquired whether it would be possible for an appointed state official with such obligations to have someone else handle those responsibilities. Commissioner Binder suggested that the doctrine of necessity would apply. Chair Lynch noted that the situation is only temporary, while he is in an acting capacity. Legal Counsel opined that, to a certain degree, it is not a matter for the Commission to decide. The Commission simply ensures that the conduct does not run afoul of the Code of Ethics. Commissioner Segovis expressed his view that the plan for how the issues are to be handled is well thought out. Commissioner Cheit noted that he works at Brown University, with which the petitioner has an affiliation, but was advised by Legal Counsel that he may participate without any conflict. Upon motion made by George E. Weavill, Jr. and duly seconded by Frederick K. Butler, it was unanimously

VOTED: To issue the draft advisory opinion as to Issues Nos. 1, 2, 4

and 5, attached hereto, to David R. Gifford, MD MPH, nominated by the Governor to serve as the Director of the Rhode Island Department of Health.

The next advisory opinion was that of Krista J. Garrett, a member of the Narragansett Town Council. In response to Commissioner Weavill, Ms. Garrett indicated that the amount of the yearly appropriation varies and has gone up from \$2,500 to \$5,000. In further response, she noted that the Little League uses town facilities and shares in using such facilities with the Department of Parks & Recreation. Upon motion made by Barbara R. Binder and duly seconded by James C. Segovis, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Krista J. Garrett, a member of the Narragansett Town Council.

The next advisory opinion was that of Raymond C. Church, a member of the Rhode Island House of Representatives. The petitioner advised that he did not have any questions regarding the draft opinion. Commissioner Binder inquired about the interplay of the class exception with being able to vote on accountancy issues. Mr. Gramitt explained that the class exception could apply in some circumstances, particularly where the legislation would affect CPA's in general, and not the petitioner or his employer specifically. He stated that the petitioner could return to the Commission for further guidance on those issues as they arise. Upon motion made by James

C. Segovis and duly seconded by Frederick K. Butler, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Raymond C. Church, a member of the Rhode Island House of Representatives.

The next advisory opinion was that of Barbara A. Barrow, Esq., a Middletown Town Councilor. Ms. Leyden reported that the matter was continued from the last meeting to obtain additional information. Ms. Barrow indicated that she had no questions regarding the draft opinion. In response to Commissioner Weavill, she informed that Attorneys Gontarz and Updegrove are the two partners and she is an associate attorney who receives a salary. She represented that she would receive a bonus if she brought in a new client and worked on the client's case, but expressed that she would not do so with regard to municipal or probate court clients.

***Commissioner Kirby arrived at 9:50 a.m.**

Commissioner Cheit wondered if the firm retains completely separate accounts for its probate and municipal court work. In response to Commissioner Weavill, Ms. Barrow stated that those matters are billed out separately. Commissioner Cheit questioned how they would know whether some of her salary would not be paid from municipal and probate court work funds if the funds are co-mingled. Ms. Leyden explained that Ms. Barrow is a salaried employee who is

paid a set salary regardless of what type of work the firm is doing. Commissioner Segovis suggested that the co-mingling of funds might be an issue if a majority of the firm's practice relates to municipal and probate court work. Ms. Barrow advised that the majority of the practice is family and criminal law.

In response to Commissioner Cheit, Ms. Barrow stated that her Christmas bonus is strictly related to her salary, in that she receives double her regular pay for one pay period. In response to Commissioner Weavill's concerns regarding annual salary increases, she represented that she has received the same salary for the past four years. Commissioner Weavill suggested that bonuses would be related to the firm's success. Ms. Barrow stated that everyone receives the same bonus across the board. In response to Commissioner Cheit, Ms. Leyden stated her belief that, as a salaried employee, the petitioner is not an equity partner in the firm. Commissioner Cheit indicated that she is the only employee, aside from the two partners. Ms. Leyden advised that the firm also employs secretaries and paralegals. Upon motion made by Frederick K. Butler and duly seconded by James C. Segovis, it was

VOTED: To issue an advisory opinion, attached hereto, to Barbara A. Barrow, Esq., a Middletown Town Councilor.

AYES: George E. Weavill, Jr., James C. Segovis, Frederick K. Butler, Barbara R. Binder and James Lynch, Sr.

NOES: Ross E. Cheit.

ABSTENTION: Richard E. Kirby.

The next advisory opinion was that of Edward R. McCormick, III, the Chairman of the Cumberland Zoning Board of Review. Mr. McCormick clarified that he resigned from the Zoning Board upon his appointment as Assistant Solicitor. In response to Commissioner Weavill, he indicated that he did not believe there are any ongoing matters before the Board in which he participated as a member. He represented that, if there were, he would recuse. Upon motion made by James C. Segovis and duly seconded by George E. Weavill, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Edward R. McCormick, III, the Chairman of the Cumberland Zoning Board of Review.

RECUSAL: Richard E. Kirby.

The next advisory opinion was that of Mark McSally, Esq., the Town Solicitor for the Town of Narragansett. Upon motion made by George E. Weavill, Jr. and duly seconded by James C. Segovis, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Mark McSally, Esq., the Town Solicitor for the Town of Narragansett.

The next advisory opinion was that of Michelle A. Buck, Esq., a Westerly Town Councilor. Commissioner Segovis inquired regarding the size of the petitioner's bonus and how it is calculated. Ms. Leyden advised that the petitioner did not make any representations regarding the bonus, other than to state that everyone receives it. Commissioner Binder indicated her desire to have information about how much of the firm's business is before the municipal and probate courts. Commissioner Segovis agreed. Chair Lynch requested that the staff ask the petitioner to appear before the Commission to answer their questions. Commissioner Weavill stated he would like to know if the formula for computing the bonus is the same for all.

***Commissioner Cheit left the meeting at 10:12 a.m.**

The next advisory opinion was that of Gary A. Girard, Chair of the Jamestown Planning Commission. In response to Commissioner Weavill, Ms. Robertson stated that the petitioner's personal residence is at issue, rather than a commercial property. Upon motion made by George E. Weavill, Jr. and duly seconded by Richard E. Kirby, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Gary A. Girard, the Chair of the Jamestown Planning Commission.

At 10:17 a.m., upon motion made and duly seconded, it was unanimously:

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (a)(4), for the discussion of investigative proceedings regarding allegations of misconduct and/or the discussion of litigation, and approval of minutes relating to such discussions, to wit:

a.) Motion to approve minutes of Executive Session held on February 15, 2005.

**b.) In re: Luis Aponte,
Complaint No. NF2005-3**

**c.) In re: Robert Dale,
Complaint No. NF2005-7**

**d.) In re: David Swain,
Complaint No. NF2005-14**

**e.) In re: John Toro,
Complaint No. NF2005-21**

At 11:05 a.m. the Commission returned to Open Session and the

Chair reported on actions taken therein. The next order of business was a motion to seal the minutes of the Executive Session held on March 8, 2005. Upon motion made by James C. Segovis and duly seconded by Richard E. Kirby, it was unanimously

VOTED: To seal the minutes of the Executive Session held on March 8, 2005.

The next order of business was a Legislative Update. Mr. Gramitt informed that H 5033 was introduced and referred to House Judiciary.

The bill would repeal the Roney amendment. Chair Lynch noted that the only time the Roney amendment was an issue was when OCG sued the Commission for considering hearing Respondents' requests for sanctions under the statute. Commissioner Kirby recalled that Attorney Lauren Jones withdrew his clients' requests for sanctions. Ms. D'Arezzo clarified that the issue was most recently before the Commission in the case of Newport Police Chief Charles Golden. There, the Commission declined to consider the Respondent's request regarding the frivolity of the Complaint. Chair Lynch stated there is no reason to take a position on the issue.

On the separation of powers issue, Mr. Gramitt reported that H 5626 and H 6092 would require the advice and consent of the Senate with regard to the appointment of Commissioners. In response to Chair Lynch, he explained that the nominating authority would have fifteen days from the vacancy to submit names to the Governor. The

Governor would have thirty days to act if the nominating authority failed to do so, and the Lieutenant Governor would act if the Governor did not act. He noted that no member of the Commission could be the business associate of a registered lobbyist, and the bills would raise the Commission's non-existent pay to \$200 per day, with a \$10,000 maximum. Mr. Gramitt informed that S 847 would accomplish the same purposes as the foregoing, without requiring the advice and consent of the Senate.

Mr. Gramitt advised that two bills regarding gifts were introduced in the legislature. H 6067 would amend the lobbying laws to prohibit elected officials from accepting gifts as a result of their positions. Also, S 368 would amend the Code to prohibit elected and appointed officials from accepting gifts over \$20 in a calendar year. Mr. Gramitt noted that this bill raises a jurisdictional issue, as the Commission has primary jurisdiction regarding substantive ethics laws. Finally, he reported that S 223 would amend the financial disclosure statute to require only general officers to list all sources and amounts of income. He indicated that, on the Commission's behalf, he had opposed a similar bill when introduced last year.

***Commissioner Segovis left the meeting at 11:25 a.m.**

The next order of business was the Director's Report. Mr. Willever informed that the staff has noticed a public hearing for March 22nd on proposed regulatory amendments. He indicated that there are

thirteen complaints and twenty-nine advisory opinions pending. He advised that the staff is starting the FY 2006 budget rounds and will testify before the Senate Finance Committee next week. Ms. D'Arezzo clarified the process for the public hearing to be held on March 22nd under the Administrative Procedures Act.

The next order of business was new business. There being none, at 11:30a.m., upon motion made by Richard E. Kirby and duly seconded by George E. Weavill, Jr., it was unanimously

VOTED: To adjourn the meeting.

Respectfully submitted,

George E. Weavill, Jr.
Secretary